Grant Prideco, L.P. d/b/a Tubular Corporation of America *and* Billy Knott. Case 17–CA–20883

December 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On June 15, 2001, Administrative Law Judge Jane Vandeventer issued the attached bench decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging employee Billy Knott because of his union and protected, concerted activities. In its exceptions, the Respondent contends that there is no evidence that it harbored union animus and that the judge erred in inferring an illegal motive. We find no merit in this contention.

It is well established that a discriminatory motive may be inferred from circumstantial evidence and the record as a whole, and that direct evidence of union animus is not required. *Fluor Daniel, Inc*., 304 NLRB 970 (1991); *Abbey's Transportation Services*, 284 NLRB 698, 701 (1987), enfd. 837 F.2d 575 (2d Cir. 1988); *U.S. Soil Conditioning Co.*, 235 NLRB 762, 764 and fn.10 (1978), enfd. 606 F.2d 940, 948 (10th Cir. 1979). See also *Davis Supermarkets v. NLRB*, 2 F.3d 1162, 1168 (D.C. Cir. 1993), cert. denied 511 U.S. 1003 (1994). Here, the judge found no direct evidence of union animus, but inferred an unlawful motive based on a variety of circumstances. These circumstances included the suspicious timing and disparate nature of Knott's discipline, the unprecedented scope of the Respondent's investigation of Knott, the absence of a cogent reason for conducting such an investigation, the failure to afford Knott any opportunity to answer the allegations raised by the investigation and, last, the fact that the Respondent's behavior was inconsistent with its progressive discipline system and its past practice. Such circumstances have repeatedly been found adequate to infer discriminatory motivation. See, e.g., *Goodman Forest Industries*, 299 NLRB 49, 55 (1990); *Birch Run Welding*, 269 NLRB 756, 764–767 (1984), enfd. 761 F.2d 1175 (6th Cir. 1985); and *U.S. Soil Conditioning*, supra. Accordingly, we find that the judge properly relied on these circumstances to infer Respondent's antiunion motive here.

ORDER

The National Labor Relations Board adopts the recommended Order as modified below of the administrative law judge and orders that the Respondent, Grant Prideco, L.P., d/b/a Tubular Corporation of America, Muskogee, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the modified Order.

Substitute the following for paragraph 2(d).

"(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

Dated, Washington, D.C. December 20, 2001

Peter J. Hurtgen,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Chalres Hoskin Jr., Esq. and *Francis Molenda, Esq.*, for the General Counsel.

R. Michael Moore, Esq. (Fulbright & Jaworski) and *Douglas Cole Grijalva*, for the Respondent.

BENCH DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on April 24 and 25, 2001, in Muskogee, Oklahoma.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co*., 335 NLRB No. 15 (2001).

The complaint alleges Respondent violated Section 8(a)(1) of the Act by informing its employees that it would be futile to select the Union as their representative. The complaint also alleges Respondent violated Section 8(a)(3) by restricting employees' use of a metallurgy lab cart, suspending its employee Billy Knott, and discharging its employee Knott. On April 26, 2001, after hearing oral arguments by counsel, I issued a Bench Decision pursuant to Section 102.35(1)(10) of the National Labor Relations Board's Rules and Regulations, setting forth findings of fact and conclusions of law.

I certify the accuracy of the portion of the transcript, as corrected,[1] pages 210 to 240, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

Exceptions may now be filed in accordance with Section 102.46 of the National Labor Relations Board's Rules and Regulations, but if they are not timely or properly filed, Section 102.48 provides that my Bench Decision shall automatically become the National Labor Relations Board's Decision and Order.

CONCLUSIONS OF LAW

1. By suspending and discharging its employee Billy Knott, Respondent has violated Section 8(a)(3) of the Act.

2. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

3. Respondent did not otherwise violate the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall also recommend that Respondent be ordered to remove from the employment records of Billy Knott any notations relating to the unlawful action taken against him and to make him whole for any loss of earnings or benefits he may have suffered due to the unlawful actions taken against him, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Grant Prideco, L.P. d/b/a Tubular Corporation of America, Muskogee, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending and/or discharging employees because of their support for a union or their concerted protected activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2.Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Billy Knott full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Billy Knott whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge of Billy Knott, and within 3 days thereafter notify the employee in writing that this has been done and that the suspension and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Muskogee, Oklahoma location copies of the attached notice marked "Appendix C."[3] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time ince June 17, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C. June 15, 2001

APPENDIX A

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JUDGE VANDEVENTER: On the record.

[1] I have corrected the transcript containing my Bench Decision and the corrections are as reflected in the attached App. B (omitted from publication).

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Pursuant to the Board's rule concerning bench decisions, which is included in Section 102.35(a)(10) of the Board's rules, as the parties know, I intend to deliver a bench decision under that rule.

I just want to preliminarily remind the parties that, after receiving the transcript, when a bench decision is rendered, I will correct any errors that appear in the transcript and only then certify the accuracy of it after it has been corrected and, when that certification and, essentially, written version of the transcript is released by me, only then does the time for filing of exceptions begin to run. So it does not run from today's date, but only when the written version of the transcript and the bench decision is issued by me, which probably will not, since I don't get the transcript for a couple of weeks, will certainly be a little beyond a couple of weeks, but I just wanted to make sure that all parties are aware of

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that—of that rule. Okay.

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BENCH DECISION

JUDGE JANE VANDEVENTER: The name of this case on the complaint was Tubular Corp., a/k/a Grant Prideco. Based on representation of counsel and other testimony of management witnesses, I will make an amendment. Preliminarily, a

statement of the case.

The case has been tried on April 24th and 25th, 2001, here in Muskogee, Oklahoma upon a charge filed by Billy Knott in October of 2000. A compliant was issued, alleging that Respondent had violated Section 8(a)(1) of the Act by informing its employees that it would be futile to select the union as their representative, and the complaint also alleged that Respondent had violated 8(a)(3) by restricting employees' use of a lab cart in the metallurgy lab and later discharging employee Knott. Respondent has filed an answer denying the essential allegations of the complaint. The parties have made oral arguments and, based on the testimony of the witnesses, including, particularly, my observation of their demeanor while testifying and the documentary evidence and the entire record, I will make the following Findings of Fact.

FINDINGS OF FACT

First, with regard to jurisdiction, Respondent, whose correct name is Grant Prideco, LP, d/b/a Tubular Corporation of America, is a limited partnership that does operate Tubular Corporation Division in Muskogee,

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Oklahoma where it's engaged in the manufacture of tubular products for the petroleum and gas industries.

During a representative one year period, Respondent purchased and received at its Muskogee, Oklahoma facility goods valued in excess of $50,000.00 directly from points outside the State of Oklahoma.

Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

And, just to be absolutely certain that we've got the name correctly, it's Grant Prideco, LP, d/b/a Tubular Corporation of America.

Background

Turning first to a brief background, Mr. Billy Knott, it is uncontradicted, is an employee and

has been or was employed from approximately May of 1997 through June of 2000. He was employed by Tubular Corporation, the Respondent, which manufactures metal products and, in doing so, maintains a metallurgical lab where various tests on the manufactured product, such as tensile strength and composition, are performed.

For a little over the two and a half years prior to his discharge, Mr. Knott worked in the metallurgical lab as a lab technician.

In June of 2000, approximately the 6th, Mr. Knott began

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talking with other employees about certain issues in the workplace, such as the company having ceased to pay bonuses to older employees or long-standing employees, whereas new employees were still receiving bonuses, and some increases in employee paid insurance costs.

After discussing these issue with employees,—and these facts are largely undisputed—Mr. Knott, with his supervisor's knowledge, called the human resources manager, Jane Broughton, and relayed these employee concerns to her and it was arranged between them that a meeting would be held to discuss the issues. A meeting was held, in fact, the following morning on June 7th, at which approximately 25 employees and managers, Broughton, as well as Dave Weigle, the plant manager, and Russell Smith, the department head, were present.

At that meeting, several employees asked questions. Mr. Knott certainly asked questions, as well. He raised employees' questions concerning the bonuses that were not being paid older employees, but were being paid to newer employees. Mr. Weigle answered with the company's concern on that issue. Mr. Knott suggested increased wages across the board for all employees, which, according to his testimony, which was uncontradicted, was not answered. Other issues were discussed at the meeting, but, certainly, it is not contradicted that these questions of bonuses, wages, and other working conditions were discussed.

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After the meeting, Mr. Knott continued to talk with employees about the issues that had been talked about in the meeting and also suggested that employees might contact a union. In the presence of another employee and the supervisor, according to Mr. Ridenhour's testimony, Mr. Knott did call a union and attempt to speak with a representative and get a representative to meet with the employees. There's no dispute that Mr. Nichols, Clint Nichols, who was Mr. Knott's immediate supervisor was aware of these facts.

As pointed out by Mr. Moore in his argument, that much is undisputed. The fact that Mr. Knott engaged in concerted protected activities and efforts to call a union is not in dispute.

I turn now to the first allegation in the complaint, which is paragraph 4, to the effect that Russell Smith informed employees it would be futile to select the union. Three witnesses addressed this allegation and Mr. Knott recalled that he had told the other employees about the union representative's promise to return his call, and Clint Nichols and Russell Smith were present at sometime during this discussion and Mr. Knott recalled that Mr. Smith said words to the effect that they tried to get a union in in the early 1980's, it didn't work then, and it won't work now.

Mr. Ridenhour, who was also present, recalled that it was

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an employee—his recollection was that employee Randy Duke was the one who said essentially these words.

Russell Smith, the supervisor who also testified, recalled that he'd been involved in a discussion about the unions with the employees, including with Mr. Knott, but testified that he confined his remarks to his own personal experience with unions in the past and denied the specific remarks that had been attributed to him by Mr. Knott.

With regard to this allegation, I would credit Mr. Ridenhour and Mr. Smith as to this remark and find that Smith did not inform the employees that choosing a union would be futile. Throughout, Mr. Smith was straightforward and pretty much no nonsense. Mr. Ridenhour's recollection was completely consistent with his earlier statements. In general, he was a quite credible witness.

Turning now to the allegation of complaint paragraph 5(a), it alleged that Mr. Nichols' restriction of the use of a particular cart to the lab's lead man was done in retaliation for the employees' union and concerted activities. Just as background to this, spectroscopist Richard Marrs had secured a cart upon which to store the samples that he needed to test and positioned it in a certain way so that his samples, called chemistries in the record, were on the more convenient side of the cart. He complained a couple of times to supervisor Nichols that the cart's position had been altered

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on the other shift, that is, the shift he did not work.

When supervisor Nichols brought up the issue with Danny Ridenhour and Billy Knott, and this was during the week of June 1, 2000, they reasoned with him that the other lab techs, who used the scrap portion of the cart—the cart had both a chemistries portion and a scrap portion—the lab techs who used the scrap portion did so far more often than Marrs used the chemistry portion and, therefore, it should be positioned more conveniently for the majority of the employees with the more convenient side of the cart for scrap. Mr. Nichols agreed and, once again, a day or two later, Mr. Marrs complained to Mr. Nichols again and lobbied for his position that the cart should be positioned so that the chemistries were on the convenient outer side. Mr. Nichols, swayed by Mr. Marrs' arguments, on June 15th told Ridenhour and Knott that the cart would be placed as Mr. Marrs wanted it, that is, with the chemistries outermost.

I find that this happened on the 15th. It was simply an announcement of Nichols' newest rule regarding the cart as to its position. The rule was confined to the cart's position, not to its use, and it was not an oral discussion or warning or any kind of discipline.

The next question is whether Nichols' imposition of the rule had anything to do with Mr. Knott's concerted protected activities and talk about the union.

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I find that it did not. The evidence shows that Nichols had been swayed back and forth by the employees who had argued for the relative rationality of each of their viewpoints. Both Mr. Knott and Mr. Marrs had advanced their viewpoints and Nichols had been swayed by whoever spoke to him last. Up to this point, nowhere in Nichols' conduct is there evidence of any connection to Mr. Knott's concerted protected or union activities. Instead, there is clear evidence that he simply vacillated.

I find that 5(a) is not a violation of 8(a)(3) and I'm going to recommend dismissal of both paragraph 4 and paragraph 5(a).

I want to turn now to the allegations that really consumed the major part of this trial, both in evidence and time, and that is the allegations regarding the suspension and termination of Mr. Knott, and, by way of background to that, Mr. Knott is a three year employee with an exemplary record and he had received regular increases, all except one being the maximum possible. The maximum possible is a two step jump in the wage spread. He'd been a lab tech for about two and a half years, or a little more, at the time of his discharge. Nichols had been his supervisor for nearly two years of that time, about 22 months. Knott had had only one warning, which had been expired for months and months under the Respondent's policy by the time of June, 2000. Other than that one expired warning, he had a clean

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record.

It will be remembered that by June 17 Mr. Nichols had done his second reversal of policy and had told Ridenhour and Knott to position the cart in the metallurgy lab with the chemistries outermost, the chemistries being the samples that Mr. Marrs used. June 17 was a Saturday. Mr. Knott and Mr. Ridenhour were working on that Saturday. Mr. Marrs was not working. Mr. Nichols was not working and was, in fact, on vacation and, apparently, not able to be reached.

It's undisputed that lab techs use several carts in their regular work and that there were several of these carts in or around the lab. Mr. Knott, corroborated by Ridenhour, testified that on that day, the 17th, he and Mr. Ridenhour were using a lighter weight cart to transport their test samples and, becoming too heavily loaded, the wheels of the lighter weight car buckled. Needing a cart to transport the work, Knott traded out the cart without wheels for the still usable one which was sitting idle with chemistries and scrap on its surface.

It is not contradicted that Mr. Knott's work and Mr. Ridenhour's work would be slowed down without the use of a cart to transport the testing samples.

Following the weekend, that is, on the

following Wednesday, Nichols told Mr. Knott in the morning not

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at use the chemistries cart at all. He gave Mr. Knott a warning notice on which he had written verbal warning. That was the morning on which, when Mr. Knott explained to Mr. Nichols the circumstances under which he had used the cart, the only cart remaining with wheels on it, to forward his work, Mr. Nichols had written verbal warning on the warning he was presenting to Mr. Knott. Both Mr. Nichols' and Mr. Knott's testimonies agree in that respect.

Later that day, Mr. Nichols told a larger group of lab techs, whether it's all the lab techs who were working that day or not is not clear, but it was, at least, five or six lab techs, to leave Marrs' cart, Richard Marrs' cart, alone.

I find that that his statement to that effect to Mr. Knott early in the morning and later the same day to the rest of the lab techs was the first time he had told the lab techs not to use the cart used for chemistries at all.

Before giving this verbal warning to Mr. Knott, Mr. Nichols had informed the human resources manager, Ms. Broughton, about Richard Marrs' complaint to him. This was before he had spoken with Mr. Knott about the events of Saturday, the 17th. Ms. Broughton, apparently, construed Nichols' announcement of his latest version of the cart rule on the 15th of June to Mr. Ridenhour and Mr. Knott as an oral warning, the first step in Respondent's disciplinary system, and, without having heard anything that Mr. Knott might say about the events of the 17th,

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since he was, apparently, not at work until the morning of the 21st. According to Mr. Nichols, Ms. Broughton and Mr. Nichols agreed that a first written warning was the proper discipline and Nichols prepared to present that to Mr. Knott. On Wednesday morning the 21st, after hearing Mr. Knott's explanation as to why he had traded one cart for the other, Mr. Nichols wrote "verbal warning," but he told Mr. Knott to leave Richard Marrs' cart, the chemistries cart, alone in the future.

I want to make a little note as to credibility of reconstructing these events. Several witnesses testified about them. Their testimony was sometimes in conflict, sometimes agreed.

With regard to Mr. Nichols, his conduct, as well as his testimony impressed me as a reed in the wind. He was swayed by whomever he last talked to. In his testimony he had a tendency to be swayed by the last question, much as the facts show he was swayed by the last employee or manager who spoke with him in the workplace. He displayed a poor recollection. His testimony was vague and he had a poor demeanor. Wherever his testimony conflicts with that of Mr. Knott or Mr. Ridenhour or the documents, I don't credit him.

With regard to Mr. Knott, I found that his recollection failed him on the occasion of the Russell Smith remark. I find that, overall, his testimony on important points was generally straightforward and was corroborated, largely corroborated, by

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Ridenhour, a very credible witness, by Marrs, too, on many points, by Nichols on many points, as well as by much of the documentary evidence, including Respondent's 1, the so-called investigation.

And, with respect to Marrs, I find that his testimony largely corroborated the sequence of events related by Mr. Knott and Mr. Ridenhour.

So, in sum, as of June 17, Mr. Nichols had not told Mr. Knott he couldn't use the chemistries cart, only that, when in its resting place, it must be positioned with the chemistries outermost. The positioning of the cart, whether chemistries or scrap was outermost, was the issue discussed. That was what was at issue.

So Mr. Marrs' complaint to Mr. Nichols on the 19th of June wasn't the same old complaint. It was a new complaint. It wasn't the issue of which were outermost, chemistries or scrap, it was now they've given me a different cart and there aren't any wheels on it.

Mr. Nichols could have got the cart fixed, could have secured another cart, but he didn't do either. Instead, he decided to impose some discipline and consulted with Ms. Broughton about it.

And, in case it wasn't clear from the preceding, I find that there was no oral warning to Mr. Knott on the 13th of June, as stated in some of the disciplinary slips that are in

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evidence, or at any other date before June 21st. There were announcements of rules, various announcements, but no oral warning until the 21st when Mr. Nichols wrote verbal warning, quote/unquote, by which I believe he meant oral warning, atop the warning notice that he was giving to Mr. Knott.

And that's the situation concerning the 6/17 incident up through the according of the warning to Mr. Knott. At that point, Ms. Broughton, being informed by Mr. Nichols that he had given Mr. Knott a verbal warning, decided for reasons of her own, to do a "full investigation." Her reasons were never really made clear in her testimony. I find that her testimony was somewhat circular on this point. The "severity" was the justification of the investigation at some points in her testimony, but, at other points in her testimony, it appeared that the "severity" had not been discovered until the course of and after the investigation.

The evidence further shows that in no other situation had Ms. Broughton interviewed more than two or three individuals—those who were involved and able to provide first-hand information—and then usually briefly. Here, she interviewed approximately 11 employees—think exactly 11 employees—most of whom had no knowledge of anything involving the June 17 incident and said so in their statements. Nevertheless, Ms. Broughton went on and continued to interview these employees who knew nothing, apparently, asking them for opinions, hearsay, or

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other non-useful material, which appears in these statements of approximately seven employees. The four employees who did know something about the incident,

Mr. Marrs, Mr. Nichols, Mr. Knott, and Mr. Ridenhour were also interviewed.

The first person to be interviewed was Mr. Knott. He was asked only about the "cart rule" and the incident on—June 17th. After interviewing Mr. Knott, the other ten individuals were interviewed and, whether they knew anything about this incident or not, were interviewed rather extensively.

It was undisputed, and Ms. Broughton essentially testified so, that never before or since has she done such an extensive investigation and I heard in her testimony no cogent explanation for why she chose to conduct so extensive an investigation in this instance.

I have reviewed, as suggested by Mr. Moore, once again, for, I think, about the third time, Respondent's Exhibit 1, the fruits of Ms. Broughton's investigation and, as I said, about four of the individuals actually have something to say about the incident under investigation. The other seven have nothing to say about it, other than unsupported allegations, hearsay, other comments, opinions about personalities, incidents that occurred months or years ago, spite, speculation, and amateur character analysis.

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To the extent Ms. Broughton relied on any of this extraneous material to the incident of June 17, it is undisputed that she never re-interviewed Mr. Knott or permitted him to make any explanation or confronted him with any of the allegations or other hearsay or other material that she harvested through these statements. She neither told him about any of them nor permitted him to make any explanation, refute them, or give his side of the story. There was no other interview.

Instead, based on the 11 statements, Ms. Broughton concluded that, not just a verbal warning, not just a written warning, but, in fact, an acceleration through three more steps of the Respondent's disciplinary system was appropriate and that Mr. Knott should be discharged. She received approval for this and it was done on June 28th.

In that interview, Mr. Phillips, who was a department head, and Ms. Broughton simply announced the discharge to Mr. Knott. They did not ask for and would not listen to anything that he wanted to say. The reasons that were advanced for the decision by Ms. Broughton were several. "Acted to undermine the supervisor" and engaged in "disruptive behavior" were two of the reasons advanced for this acceleration of discipline to employment capital punishment or discharge.

She told Mr. Knott at his interview, however, that the reason for his discharge was "deliberate insubordination." So there are three reasons advanced by the

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testimony. There may be more, but the one communicated from the memos, Respondent's 1, and the one communicated to Mr. Knott, was "deliberate insubordination."

With regard to the facts concerning

Respondent's disciplinary policy, the policy was, briefly, an oral warning, three written warnings, and then a discharge or not if in the discretion of the human resources manager the employee deserves another chance. Warnings expire after one year. Absentee occurrences expire after six months. And there was considerable evidence of the use and application of that policy, which was discussed by both the General Counsel and Respondent and Ms. Broughton explained some of the apparent deviations.

In the one case, Wheeler, there was a deviation from the policy according to Ms. Broughton, because the supervisor felt that that was all that was warranted, the warning and/or notation.

In G. C. 6, the case of an argumentative and angry employee, Ms. Broughton had two meetings with the employee and to explain that his behavior was not appropriate. These meetings did not necessarily result in a warning.

And in G. C. 14, Ms. Broughton admitted there were errors in applying the policy, and that was one of them. In G. C. 8—I've got the name of the employee there, Arriaga, there was an error made by the supervisor.

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There were two infractions which were clear on the third warning. An error was made by the supervisor and it was permitted to stand. There should have been an additional warning because there were two incidents, according to the documents.

And in G. C. 9, Ms. Broughton states there was no disparity and there was no irregularity in the way the policy was applied.

Regarding G. C. 10, regarding an employee who did not get along with other employees, was abusive to other employees, and called them scurrilous names, including "bitch," for that employee it was suggested that she should go to the Employee Assistance Program, which is noted on the form by the initials EAP.

In General Counsel 13, an employee whose name was Marlow, was at the last step of the disciplinary procedure, and the employee's supervisor recommended that he be discharged. Ms. Broughton exercised her discretion in the direction of mercy and gave him one more chance, but he didn't take it very well and was later fired. But Ms. Broughton's explanation of the policy is that it does permit discretion. Not only does the policy allow discretion, but she exercises it.

I would additionally mention in the facts that Mr. Weigle testified that he had some participation in the decision, relying only upon Ms. Broughton's advice and investigation, as he, himself, did not do any personal investigation, other than talking to Mr. Nichols. Mr. Nichols had reported to

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him that Mr. Knott had said he would talk how he pleased with other employees and, after both speaking with Nichols and Ms. Broughton, Mr. Weigle believed that Mr. Knott had engaged in "intentional mischief" and continued in "intentional "insubordination" and, likewise, an out-and-out effort to interfere with supervision and to disrupt the workplace. And he stated that he relied only on the last week of Mr. Knott's career, not the other portion of it in reaching his decision to concur with Ms. Broughton's recommendation.

I would note that, with regard to making some credibility findings, the testimony of Cotner and Hurst was completely unhelpful. I don't credit their testimony and, to the extent that Respondent relied on their statements, it was undoubtedly unhelpful to Respondent's investigation, as well.

In terms of Mr. Weigle and, generally, his testimony that, in fact, Mr. Knott's union and protected concerted activities had absolutely nothing to do with his decision to fire Mr. Knott, I did not credit Mr. Weigle. His demeanor was extremely poor. His answers were hesitant and unsure.

With respect to Ms. Broughton, I will, in my findings, elucidate this further, but her answers to many questions essentially circled around the topic and did not address it, avoided questions many times, and she often gave inconsistent or unresponsive answers. The answers sometimes make no sense, such

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as the statement that she was supporting a supervisor when, actually, undercutting him in his actions. In general, I discredit her recitation of reasons upon which she relied, and, as I have already found, to the extent that she testified there had been an oral warning to Mr. Knott, during the week of June 12th, I do not credit that.

Turning to the legal standard used, as the parties are fully aware, it's the G. C.'s burden under *Wright Line*, 251 NLRB 1083 (1980)—662 F.2nd 899 (1st Cir. 1981.) Cert denied 455 U.S. 989 (1982).

It is the General Counsel's burden to prove the employees had concerted protected or union activities, the employer was aware of those, that there was action take against the employee, that that there was some animus toward these activities or the employee because of engaging in these activities, and there was some connection between the concerted protected activities and the action against the employee.

And that same case goes on to point out that a Respondent may rebut this *prima facie* case by demonstrating, carrying its burden of demonstrating that the same action would have been taken against the employee, regardless of any union or concerted protected activities.

In the case at hand, there is not a lot of dispute about certain of the elements of the General Counsel's case. The concerted protected activities and union activities

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of Mr. Knott to the extent of trying to contact a union are admitted and it's also admitted that they were known to the employer.

The further element that's not disputed is that there was action taken against the employee, who was warned on June 21, suspended on June 23, and discharged on June 28, precipitated by the incident on June 17.

With regard to the element of animus, there is dispute. I have found that there is no direct evidence of animus, i.e. Mr. Smith's statement, which was alleged in the complaint. However, I find that it is possible to infer from various other circumstances and facts that animus exists such as the timing of the action, the disparity shown toward the employee, the conduct of the investigation, whether cogent reasons were advanced or not, and whether the behavior of the employer was consistent or inconsistent with its prior practice.

I find that all those factors weigh in the direction of demonstrating that Respondent did harbor animus against Knott for his activities and that inference is buttressed by certain statements which were repeatedly made by both Mr. Weigle and Ms. Broughton concerning employees being disruptive, which in the context in which it was said often meant that he talked to employees about things that they didn't want the employees talking about and it was his, Mr. Nichols', report to Mr. Weigle that Mr. Knott said he would talk with employees any way he wanted to with employees, which caused

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Mr. Weigle to conclude that Mr. Knott was disruptive in the workplace and was engaging in misconduct.

These phrases of "disruptive in the workplace" were repeated and have often been seen, and I see them in this case, as essentially a code word for unhappiness with the employees' propensity to talk to other people and to stir other employees and to, essentially, try to get them interested in discussing the working conditions and, possibly, a union.

Therefore, the connection between the employer's unhappiness with the protected activities and union activities of Mr. Knott is connected to the action taken against him by several factors. The timing is primary among them. The disproportionate punishment for the infraction of using the cart on the 17th of June is another. The disparity and the conduct of the investigation all show, that there is a connection between this animus and the action taken against Mr. Knott.

Respondent's defense is that Mr. Knott's conduct not only on the 17th but for two years earlier than that justified his termination.

The evidence shows that, in fact, Respondent investigated the June 17 incident, for which it is undisputed Ms. Broughton believed that Mr. Knott should get a first written warning. But

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assertedly upon the basis of 11 employees' statements, which dealt with many other issues than the June 17 incident, including hearsay, old allegations, as old as two years, vague attitude complaints of other employees about Mr. Knott's conduct, all of which had been tolerated by the supervisor and not the subject of discipline, she decided that, in fact, even though he had never been disciplined for any of this conduct, he needed to be fired for it now.

Again, Ms. Broughton did not afford Mr. Knott any opportunity to respond to these new allegation, or hearsay accusations, many as old as two years, the allegations, essentially, uncovered in her investigation, or to get his version of any of the events. The interviews were far-ranging. Not only did Ms. Broughton interview all employees in the metallurgy lab, but even employees not in the metallurgy department and employees not on Knott's shift. As noted before, approximately seven of the employees interviewed had no knowledge of the incident that was supposedly being investigated.

So Ms. Broughton acted on these accusations and allegations without any input from Mr. Knott and decided to terminate a three year employee with an otherwise clean disciplinary record. In doing so, the General Counsel argues that, first Respondent never explained why the verbal warning suddenly metamorphosed into accelerated discipline, not just a written warning, first,

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second, or third, but all the way to discharge, never explained why it conducted an investigation unique in its history, and that the only explanation is that the mission of the investigation was Mr. Knott's discharge. This conclusion seems to me inescapable.

The problems that Mr. Knott was taxed with in the statements collected by Ms. Broughton were problems which had been tolerated by Respondent at all supervisory levels for two years or more. For them suddenly to become in June of 2000 a reason for termination is not logical. Therefore, it raises the search for some other motive.

The General Counsel also argues that

Respondent has not sustained its burden of showing that it would have discharged Mr. Knott in any case because it has not shown that it would have discharged any other employee for similar conduct. The General Counsel has pointed to a number of issues which showed that Mr. Knott's conduct was treated differently, that there was disparity in application of disciplinary policies to him.

I agree that there was disparity and find that it existed in a number of ways. First, in the issue of progressivity. In several cases, of which there is evidence in the record, such as Summers, Silbaugh, and Page, the progression of the discipline was extended. One time the discipline was shortened, but only to a second warning, but that employee was later given many additional "chances." In other words, this progressivity, in

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which there was discretion, where there was discretion, it was used on the side of giving employees another chance.

Ms. Broughton herself felt it would be unfair in several of these situations to—unfair to the employee to, even though they had a third warning on their record, to discharge them for their next infraction, so gave them another chance on at least, two occasions.

In Mr. Knott's case, the discretion was used to ignore the progressive policy, to shorten it for the use of a cart on one work day, in the employee's work.

Another aspect of the disparity is that there were errors made by supervisors in discipline, which Ms. Broughton noted, and recommendations made by them. Where there were errors by supervisors, Ms. Broughton said in order to support supervisors and because the error or sin of the employee might be somewhat old, those errors were permitted to stand and, to do otherwise, would not be fair to the employee.

In Mr. Knott's case, however, old sins or old errors, even though no one had given him any discipline for them and they'd been tolerated, were used as a justification to accelerate discipline and to give discipline, essentially, for conduct up to two years old.

In the cases, most cases, Ms. Broughton believed it was the Respondent's policy to support the supervisor, but not in Mr. Knott's case. She contradicted Mr. Nichols' award of a verbal

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warning and accelerated it to discharge.

And in the only other case I could find in the evidence in which the supervisor's recommendation was not followed, in that case Ms. Broughton's discretion was exercised on the side of mercy. She decided not to follow the supervisor's recommendation to fire an employee for what the supervisor viewed as insubordination.

A third aspect of the disparity was the suggestion of the EAP, or Employee Assistance Program, to several employees who were perceived to have a problem getting along with other employees. Silbaugh and Brown are two of the examples that appear in the evidence. They were either angry, disruptive, or didn't get along with other employees. Wheeler is another case. He showed up drunk. Some of these employees were recommended to go to the Employee Assistance Program.

There was no evidence that the EAP was considered or recommended for Ms. Broughton's perception that Mr. Knott had a hard time getting along with the other employees in his department. therefore, he was treated differently from these other three employees who had, arguably, committed more serious infractions.

And severity is another aspect in which the disparity is shown. There were no discipline or discharges for several incidences of coming to the plant drunk, threatening employees with guns, sleeping on the job repeatedly, insubordination,

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abusive and foul language to coworkers, which occurred repeatedly.

I find that those are more serious than Mr. Knott's use of the cart on June 17th. Those employees, by the way, Wheeler, Arriaga, Marlow, Brown, Summers, are some of the examples where serious conduct either was not disciplined at all or, certainly, the employee was not discharged.

Another aspect of the disparity: Ms. Broughton's description of the policy is, normally, she refused to impose discipline for outdated misconduct that had been overlooked in the past. Arriaga and Wheeler are two instances in which this occurred.

That was not the case with Mr. Knott. His errors that were perceived to be revealed in the investigation by Ms. Broughton were, according to her testimony, reason for discipline up to and including discharge, even though the allegations were old, whereas, in her words, it would have been unfair to impose discipline later on other employees.

And there is another aspect of disparity and that is the investigation.

The evidence of all the other discipline in the record shows, first, there was no cogent reason for beginning this investigation. It was over-broad and no opportunity was afforded Mr. Knott to respond to any of the supposed sins uncovered in the investigation.

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For all three of those reasons, the investigation and the conduct of it was disparate with regard to other employees.

Assuming, without deciding, that the investigation did disclose that Mr. Knott had an overbearing personality, Respondent tolerated that for three years and accorded no discipline to Mr. Knott for it. It was, obviously, not the real reason for his

discharge. To the extent it was relied upon, Respondent seized upon it as a pretext. And General Counsel is correct in citing *Norris O'Bannon*, 307 1236 (1992) in support of that finding.

With regard to the investigation, I would also note that *Brookshire Grocery Company*, 282 NLRB No. 166 does support the notion that a hasty and unfounded discharge may imply unlawful motivation when there's been no opportunity to explain the discrepancies and the nature of management's investigation is not conducive to a fair investigation.

In sum, I find that Ms. Broughton's actions in overriding Mr. Nichols' already administered oral warning and changing it by her own determination to a written and then a discharge is unreasonable and inexplicable and I

conclude, that the real reason for the discharge was Mr. Knott's concerted protected activities and his union activities.

In fact, I find that Mr. Knott accurately stated the case at his discharge interview when, according to Respondent's Exhibit 1, upon being discharged, he said to

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Ms. Broughton "This is not over the cart. You all are afraid of my voice out there." That comes directly from the evidence, the first page of Respondent's Exhibit 1. I find that that's exactly the reason that Mr. Knott was discharged.

Respondent has not borne the burden of showing that it would have discharged Mr. Knott in any case. In sum, had it really been his obstreperous personality, he would have been discharged long ago. Had it been the cart incident, Nichols' verbal warning was the discipline that was given for that. And the disparity evidence shows conclusively that Respondent would not have fired him for the conduct on the 17th.

In conclusion, those are my findings with regard to the suspension and discharge of Mr. Knott and I will recommend dismissal of paragraph 4 and 5(a) of the complaint.

CONCLUSIONS OF LAW

And my conclusions of law are: 1. That, by suspending and discharging its employee Billy Knott, Respondent has violated Section 8(a)(3) and (1) of the Act; and, 2., the violation set forth above is an unfair labor practice affecting commerce within the meaning of the Act.

And, as to remedy, I shall recommend that Respondent be required to cease and desist and take certain affirmative action necessary to effectuate the policies of the Act, that Respondent be ordered to reinstate Mr. Knott to his former position, to remove from his employment record any notation relating to the unlawful action taken against him and to make him whole for any loss of earnings or benefits he may have suffered due to the unlawful actions taken against him in accordance *with F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons For the Retarded*, 283 NLRB 1173 (1987).

On these Findings of Fact and Conclusions of Law and on the entire record, I issue the following recommended Order:

That Respondent, Grant Prideco, LP, d/b/a Tubular Corporation of America, its officers, agents, successors, and assigns shall cease and desist from:

A. suspending or discharging employees because of their union or concerted protected activities;

B. in any like or related matter interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act; and, 2, take the following affirmative action necessary to effectuate the policies of the Act within 14 days of the date of the Order or if not full reinstatement to his former job or if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed; make Billy Knott whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision; within 14 days of this Order, remove

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from his files any reference to the unlawful suspension and discharge; if not, within three days thereafter, notify the employee in writing that this has been done and that the suspension and discharge will not be used be used against him in any way.

Also, preserve and within 14 days of request make available to the Board for examination and copying all payroll records, social security payment records, and other material necessary to analyze the amount of back pay due under the terms of this order and within 14 days after service by the Region post at its Muskogee location copies of a notice which will be attached to my certification and publication of this decision and will be marked Appendix in that publication and thereafter file within 21 days of service by the Region file with the regional director a sworn certification of a responsible official provided by the region attesting—on a form provided by the region attesting to the steps that Respondent has taken to comply.

The Appendix constituting a notice to employees will be a part of my decision.

Again, I would just reiterate that time for exceptions begins to run upon the issuance of this bench decision in writing, and I thank you all for your participation and the presentation of your cases and the hearing is closed.

(Whereupon, the hearing in the above-entitled matter was

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closed.)

APPENDIX C

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights:

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT suspend or discharge employees because of their support for a union or their concerted protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL reinstate Billy Knott to his former job, and WE WILL make him whole for any loss of pay or other benefits he may have suffered because of our unlawful suspension and discharge of him.

WE WILL remove from our files any reference to the unlawful suspension and discharge of Billy Knott, and notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

GRANT PRIDECO, L.P. D/B/A TUBULAR CORPORATION OF AMERICA